IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1376 of 1986
with
FIRST APPEAL No 1406 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

TULSIBEN SHIVJIBHAI PATEL

Appearance:

1. First Appeal No. 1376 of 1986
MR SN SHELAT for Petitioner No. 1
MR HARDIK C RAWAL for Petitioner No. 1
MR ANAND R PATEL for Respondent No. 1-5
NOTICE SERVED for Respondent No. 6

2. First Appeal No. 1406 of 1986
MR AG VYAS for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

and

MR.JUSTICE M.S.SHAH

Date of decision: /04/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Judgement and award dated 25.3.1986 rendered in M.A.C.Petition No.652 of 1983 by the M.A.C.Tribunal (Main) Nadiad, District - Kheda, awarding compensation of Rs.82,950/- to the dependents of deceased Shivjibhai, who died in a vehicular accident on 10.4.1983, has given rise to these appeals; First Appeal No.1376 of 1986 preferred by the G.S.R.T.Corporation challenging the impugned award and First Appeal No.1406 of 1986 by the dependents of the said deceased for the enhancement in the compensation.

2. Facts leading to the filing of the claim petition shortly stated are that on 10.4.1983 at about 10.00 a.m. one Shivjibhai, aged about 27 years, riding his motorcycle bearing registration no.GTU 1508, was returning from Borsad to Tarapur; that at that time a passenger bus bearing registration no. GRT 6655 driven by opponent no.1 at an excessive speed and in a rash and negligent manner came from opposite direction; that the road is from east to west; that the S.T.Bus was going towards east whereas the motorcycle was coming from east and going towards west; that the width of the road is 18 feet; that the S.T.Bus came on the incorrect side of the road and the front right hand side bumper dashed with the motorcycle with the result the motorcyclist Shivjibhai sustained injury and succumbed to the same on the spot; that the motorcycle sustained damage to the tune of Rs.5000/-. Hence, the petition claiming compensation on account of death of Shivjibhai as a result of rash and negligent driving by opponent no.1 while in course of employment with opponent no.2 and also damage sustained to the motorcycle.

3. Opponent no.2 - G.S.R.T.Corporation filed written statement at Exh.14, inter alia, denying the age, income of the deceased as well as the manner of the occurrence of the accident as stated in the claim petition.

It is not denied that opponent no.1 was driving the passenger bus while in course of employment with opponent no.2. It is contended that opponent no.1 was driving his bus on the left hand side of the road at a slow speed and when he came near the place of occurrence of the accident, motorcycle in question came on the wrong

side of the road from the opposite direction; that opponent no.1 tried to take his bus on kaccha strip to the left hand side of the road and had applied breaks. Still however, motorcyclist could not control his motorcycle so he dashed against the front right hand side headlight of the bus. Thus, according to opponent no.2 the accident took place on account of the negligence on the part of deceased Shivjibhai, who was admittedly riding the motorcycle at the relevant time.

4. The claims Tribunal, appreciating the oral evidence particularly of opponent no.1 at Exh.44 and also appreciating the documentary evidence viz. FIR Exh.19 and Panchanama pertaining to the place of accident at Exh.18, found opponent no.1 the driver of the offending vehicle to be the sole negligent in the occurrence of the accident. The claims Tribunal appreciating the evidence on record estimated the income of the deceased Shivjibhai at the time of accident and also considering the other factors, computed the loss of dependency benefit and awarded, in all, Rs.82,950/- to the claimants. It is this award of compensation which is assailed in these appeals by the G.S.R.T.Corporation as well as the claimants, claiming enhancement in the compensation awarded vide impugned award by the claims Tribunal.

5. It is submitted by Mr.H.C.Raval, learned advocate for the appellant G.S.R.T.Corporation that the oral evidence at Exh.44 of opponent no.1 - driver of the S.T. Bus has been wrongly discarded by the claims Tribunal; that the motorcyclist could have averted the accident by taking the motorcycle to his left; that there was no obstruction on his side of the road at the relevant time; that the S.T. Bus was coming from west and going towards east, whereas the motorcycle came from opposite direction i.e. from east to west; that at the relevant time, a lady with a child was standing on the road and in order to save the lady and the child, the S.T.Bus was taken on the right hand side of the road; that the motorcyclist also must have seen the lady with the child on the northern half of the road and that opponent no.1 was required to take his bus on his right left hand side, the deceased should have taken his motorcycle more on his left side to avert the accident and that opponent no.1 alone cannot be regarded rash and negligent in driving the bus; that opponent no.1 applied brakes to his bus, yet the right hand side bumper touched the motorcycle; that the impact took place in the middle of the road; that the S.T.Bus travelled 70 feet after the application of the brakes; that looking to the evidence on record, the deceased should be held 20% contributory negligent in

the occurrence of the accident. No other point has been urged by Mr.Raval on behalf of appellant G.S.R.T. Corporation.

It is submitted by Mr. Anand Patel, learned advocate for the appellants - claimants that at the relevant time, one lady with a child was on the road; that opponent no.1 swerved his bus on the right hand side of the road and dashed with the motor cycle coming from opposite direction causing injury to the motorcyclist culminating into his death on the spot; that Panchanama pertaining to the place of accident, Exh.18, suggests that the offending bus came very much on the wrong side and gave dash with it's right hand side bumper to the on coming motor cycle; that accident occurred due to sole negligence of opponent no.1; that the deceased was a partner in the saw mill inclusion of the minor dependent as a partner in the saw mill business in place of the deceased, is not relevant for the purpose of determining the loss of dependency benefit; that the father of the deceased has been wrongly not considered as dependent of the deceased; that the claims Tribunal ought to have awarded 12% interest on the award amount and that Rs.5000/- awarded by way of loss of consortium to the widow is also very much on the lower side; that the income of the deceased during the year 1982-1983 is Rs.14,140/- and that the accident took place on 10.4.1983.

6. R & P of the case has been requisitioned from the claims Tribunal concerned. We have gone through the R & P and also carefully considered the submissions advanced by the learned advocates appearing for the parties.

7. It is not disputed that the S.T.Bus bearing registration no.GRT 6655 driven by opponent no.1 in course of employment with opponent no.2, met with an accident causing injury to one Shivjibhai, who was driving the motorcycle bearing registration no. GTU 1508. It is also not in dispute that the S.T.Bus was going from Cambay to Baroda, whereas the motorcycle came from opposite direction i.e. from east to west and the collision between the two vehicles was a head-on collision. That for the S.T.Bus the correct side of the road would be the northern half, whereas the correct side for the motorcycle would be the southern half of the road. The width of the road as suggested from the Panchanama, Exh.18, is 18 feet. The copy of the FIR is produced on record at Exh.19, lodged by opponent no.1 soon after the accident. In the FIR, it has been stated that when the accident took place one lady with a child

was standing by his side of the road. In the deposition, Exh.44, before the claims Tribunal, the driver has tried to improve upon by denying that on seeing the lady with a child he had taken his bus towards right hand side of the road and so the Bus had dashed with the on coming motorcycle.

8. Panchanama, Exh.18, suggests that width of the Bus was 7' : 10" with a length of 31'. The road being east-west, the correct side for the bus would be northern half of the road. Panchanama, Exh.18, also suggests that it was the right hand side bumper corner had dashed against the motorcycle. In FIR, Exh.19, it has been stated by opponent no.1 that when he tried to take the bus towards his side, he saw one lady with a child standing on that side so he had applied the brakes and then, immediately took his bus on the side. Thus, in Exh.19, it has not been stated that he applied the brakes and stopped the bus, whereas in deposition, Exh.44, it has been stated that he applied breaks and stopped the bus. In FIR, Exh.19, it is also not stated that it was the motorcyclist who had dashed against the bus whereas in the deposition, Exh.44, it has been deposed that the motorcyclist had dashed against the bus. Thus, it appears that opponent no.1 has tried to resile from the statement which he made at Exh.19 before the claims Tribunal in Exh.44. Panchanama pertaining to the place of occurrence, Exh.18, suggests that the motorcycle was found on the road at a distance of 3.5 feet from the southern edge of the road which was the correct side for the motorcyclist. It is pertinent to note that Panchanama does not suggest that the motorcycle was on the northern half of the road. Motorcycle was facing west whereas the front tyre of the motorcycle and mudguard were also found damaged with a broken glass of the front light. Panchnama also suggests that the luggage carrier which is at the rear of the motorcycle, was found lying at a distance of 8 to 9 feet from the motorcycle. It appears from the Panchanama that the impact must have been at a distance of 8 to 9 feet on the road to the east of the place where the motor cycle was lying. It appears that after the impact the motorcycle must have travelled some distance so the place where the carrier found can be regarded as the place of impact. Panchnama also suggests that some spare-parts and tools were found lying scattered near about motorcycle. The dead body was found at a distance of 1 and 3/4 feet to the south of motorcycle. The broken pieces of glass of the front light were found in the area of 7 feet on the southern side of the road to the east of the motor cycle. The passenger bus was found at a distance of 78 feet

towards the north from the place where the motorcycle was lying which would suggest that S.T.Bus must have travelled a distance of 70 feet from the place of the impact before coming to the stop, whereas the motorcycle after the impact appears to travel about 7 to 9 feet from the place of accident. Panchanama also suggests that front right hand side part of the bumper was found to have bent. Meaning thereby that this part of the bus came in contact with the motor cycle in the accident. All these, in our opinion, go to suggests that the bus was on the southern half of the road when the accident took place as even FIR, Exh.19, suggests that the front right hand side corner part of the bumper had touched the motorcycle and dent was found on this part of the bus. Panchanama also suggests that there were marks of scratches on the bumper and the sheet above right hand side wheel of the bus with a piece of flash and a stain of blood on the front right hand side wheel of the bus. It appears from the evidence on record that in order to avoid the occurrence of the accident with the lady and child, opponent no.1 had swerved his bus towards the right hand side of the road and that at that time, the impact took place and it was after the impact that the bus had travelled the distance of about 70 feet and it was at that point of time the bus was being swerved towards the left hand side of the road the bus must have stopped, and that is why the bus was found at some distance away from the northern edge of the road after the occurrence of the accident. Appreciating the evidence particularly the deposition of opponent no.1, Exh.44, Complaint, Exh.19, Panchanama, Exh.18, we have no hesitation in agreeing with the finding of sole negligence of opponent no.1 in the occurrence of the accident, arrived at by the claims Tribunal. The evidence on record does not suggest that the motorcyclist could have averted the accident by taking his motorcycle towards his left. In our opinion, the claims Tribunal on appreciation of evidence, has justifiably reached a finding of sole negligence of opponent no.1 in the accident and there is no interference called for in the finding of fact arrived at by the claims Tribunal on appreciation of evidence.

9. The evidence of witness Premjibhai Jethabhai (claimant no.4), Exh.33, suggests that the deceased Shivjibhai was his son and a partner having 25% share in the profit and loss in the business of the saw mill and getting the income of Rs.14,000/- to 15,000/- by way of his share from the partnership business. It is the say of witness,Exh.33, that the deceased used to give Rs.500/- to him and remaining amount was being given to

his wife. There is no evidence challenging the source of income to the deceased from the partnership business of saw mill. The evidence of witness, Exh.33, also suggests that the witness is also a partner in the said partnership business of saw mill. The evidence of witness,Exh.33, also suggests that the witness does not stay at Tarapur but, he stays in Kuttch and during the life time of his son, witness used to come to Tarapur for 15 days in a month. Witness, Exh.33, as a source of income as the partner in the saw mill, whereas his deceased son was also a partner with him and other persons and the witness still continues to be the partner in the said business with 1/4 share. This would suggest that witness,Exh.33 (claimant no.4) cannot be regarded as a dependant of deceased Shivjibhai and for that matter, opponent no.5 the mother of the deceased also cannot be regarded as a dependant of deceased Shivjibhai.

10. As far as the income of the deceased on the date of accident - 10.4.1983 is concerned, the claimants have produced the income-tax assessment orders pertaining to the year 1980-1981 to 1983-1984 at Exh.23 to 25 and Exh.31. In the assessment year 1980-1981 the income of the deceased is assessed at Rs.11,801/-, in the assessment year 1982-1983 at Rs.11,430/-, and in the assessment year 1983-1984 at Rs.14,140/-. The accounting year immediately preceding the death of deceased Shivjibhai would be accounting year 1982-1983 which would be the assessment year 1983-1984 as the accident occurred on 10.4.1983, and the income of the deceased during the financial / accounting year 1982-1983 is Rs.14,140/-. Appreciating the evidence on record as regards the income of the deceased the same can safely be estimated at Rs.1000/- per month i.e Rs.12,000/- per annum. It may be appreciated that the inclusion of the minor son of the deceased in the partnership business and minor getting share in the profit as the partner is absolutely irrelevant for the purpose of determining the income of the deceased at the time of accident and the resultant loss of dependency benefit.

In the case of Rukmani Devi Vs. Omprakash, 1991 ACJ 3 (SC), while considering a case of a deceased who was a partner in the partnership firm after his death in motor accident the partnership business was continued by the family members, the Apex Court observed that no deduction of the benefit being derived from the partnership business can be given in the compensation determined by the claims Tribunal.

Following the principle in the case of Rukmani

Devi (supra), the share of profit derived by the minor as the partner in the partnership firm wherein the deceased was a partner, cannot be deducted for the purpose of determining the loss of dependency benefit to the dependents.

11. Now, taking the income as per the assessment order Exh.31 for the assessment year 1983-1984 which would be the financial year 1982-1983 and the accident having occurred on 10.4.1983, the income of the deceased can be safely taken as Rs.1000/- per month. There is no evidence as regards the future income of the deceased had he survived the remaining span of his life. Applying the formula of adding double the amount, dividing by half, i.e. Rs.1000/- per month + Rs.2000/- = Rs.3000/-, 1/2 it would suggest an amount of Rs.1500/- per month deducting 1/3 amount i.e. Rs.500/- per month which the deceased would have normally spent on himself, the loss of dependency benefit would come to Rs.1000/- per month i.e. Rs.12,000/- per annum and considering the age of the deceased to be 27 years on the date of accident, the application of 15 years purchase factor would be quite proper and reasonable which would suggest an amount of Rs.1,80,000/by way of loss of dependency benefit to the dependents. The claims Tribunal has erred in computing compensation by applying wrong principle.

12. Now, coming to the question of rate of interest, the claims Tribunal has awarded 6% interest from the date of application till the deposit of amount. It is stated by Mr.H.C.Raval, learned advocate that the entire awarded amount of Rs.82,950/- has been deposited in October,1987 and the claimants must be getting 12% interest on the said amount and that the claimants are getting interest accordingly.

In the case of S. Kaushnuma Begum and Others Vs. New India Assurance Co. Ltd. and others, 2001 AIR SCW 85, the Apex Court has awarded 9% interest on the amount of compensation awarded from the date of the application in that case where the accident had occurred in the year 1986.

In the later decision in the case of Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another, 2003 AIR SCW 1266 while agreeing with the grant of 9% interest on compensation in the accident case it has been observed that, "no ratio has been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial

discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors ..... No rate of interest is fixed under Section 171 of the Motor Vehicles Act,1988. ..... Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept him out of money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to nature of provision of Section 171 giving discretion to Tribunal in such matter ....".

Considering the fact that since October,1987 the claimants have been getting the interest on the awarded amount deposited by the G.S.R.T.Corporation, we are inclined to maintain 6% interest on the amount of compensation awarded by the claims Tribunal but, inclined to award 9% interest on the enhanced amount of compensation from the date of application till deposit.

13. The above discussion would reveal that the claimants would be entitled to additional / enhanced compensation of Rs.1,17,000/- by way of loss of dependency benefits with 9% interest from the date of application till deposit.

14. It, therefore, follows from the above that First Appeal No.1376 of 1986 would be liable to be dismissed, whereas the First Appeal No.1406 of 1986 deserves to be partly allowed to the extent that the appellants (claimants) would be entitled to additional / enhanced amount of compensation of Rs.1,17,000/- with 9% interest from the date of application till the deposit of the said amount by the respondent - G.S.R.T.Corporation with no order as to costs in both the appeals. Order accordingly.

(N.G.Nandi,J.)

(M.S.Shah,J.)

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